THE

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MADRAS ESTATES LAND ACT.

PRIVATE LANDS

According to the Estates Land Act, land in an Estate is divided into two main classes, (1) Ryoti ; and (2) Private. "Old waste" is a species of the genus 'ryoti.' But waste land belongs to the Ryoti stock. The whole object of the Legislature is to prevent the stock of "Ryoti" land from being encroached upon. In the leading case known as the "*Chikkoti*" *case*, Justice Sir Subramania Iyer says, "nor can it be said that this is true only as regards so much of the land in the hands of the Ryots as cannot be shown to have been obtained by them from Zamindars. For in the case of lands which have been relinquished by the former occupants or which have been lying waste from time immemorial, they too when taken up by a ryot are treated exactly on the same footing as land in the possession of which it is now shown that the ryot was let in by a Zamindar and the ryot held possession of them for an indefinite period." The proviso to clause (3) of Section 6 of the Estates Land Act saves the special rights which by law or custom the ryots may have in the waste land of the Estate. In the case of "Old waste" the ryot can purchase the occupancy right by paying two and a half times the yearly rent. Turning then to the class of "Private" land the provisions in Chapter XII of the Madras Estates Land Act, have been enacted for the ascertainment of the stock of "Private" land and to prevent "Ryoti land" being turned into "Private land" through the influences brought to bear by the land-holder upon his ryots. When the question is whether land is "Private" or "Ryoti" or Public land, the real party against the landholder is not any individual ryot in the Estate but it is the Public at large *i.e.*, the community. The members of the community have theoretically equal rights. Public lands should be retained for the benefit of the Public. The land-holder should not be allowed to appropriate these lands for his own benefit. One vital principle of the Act is that the stock of Ryoti land shall not be diminished. Besides the provisions in Chapter XII, other provisions have also been enacted to prevent a land-holder from diminishing the stock of "Ryoti" lands and rack-rent the ryots. Section 6, Clause (4) is enacted to prevent "Ryoti" land from being held by the land-holder as a ryot *i. e.*, to prevent the "merger—" prevent the land-holder from becoming a ryot and treating the ryots under him as under-tenants. There are two ways by which occupancy rights may be defeated:—(1) by turning Ryoti land into "Private land," and (2) by the land-holder trying to become a ryot so as to treat the ryots under him as rack-rented tenants. The law prevents the land-holder from doing so. "Once Ryoti, always Ryoti" is the first principle recognised by law. If it can be

shown that a particular holding was once ryoti land, any device or artifice on the part of the land-holder cannot help him to convert the "Ryoti land" into "Private" land. The Law lays down two main and a few subsidiary rules to guide us in arriving at the correct conclusion whether a particular holding is the land-holder's "Private" land or not. 1st Rule :—Real "*Savaram*" land will remain as "Private" land whether tenanted or not. (This will not prevent a land-holder from converting his "Private land" into "Ryoti" land.) 2nd Rule :—All land which is proved to have been cultivated as Private land by the land-holder himself by his own servants or by hired labour with his own or hired stock for 12 years immediately before the 1st of July 1908. Besides the above two rules the Law lays down that regard shall be had (1) to local custom, (2) to the question whether the land was before the 1st day of July 1898 specifically let as Private land and (3) any other evidence. The above points will have to be considered in deciding whether a particular piece of land is "Private" or not. The period "prior to the 1st day of July 1898" refers to Private land proper in which there may have been a tenancy. (Per the Honourable Mr. Forbes at page 451 of the Proceedings of Legislature). For instance, a ryot had executed before the 1st day of July 1898 a Muchilika containg a condition that the land comprised in the Muchilika is "Home-farm" or "Swanthaka matham;" this fact will be considered but it is not conclusive proof that the land is "Private" land of the land-holder. If it is proved that the land belongs to the class of "Ryoti" lands, before the said Muchilika was executed, but was relinquished or abandoned by the former ryot, the land-holder's contention that the land is private will be of no avail. The provisions of section 189 of Act I of 1908 may be referred to in this connection. It is also enacted in Sub-section (2) of Section 183, that "notwithstanding any-thing contained in any agreement or compromise, or in any decree which is proved to his satisfaction to have been obtained by collusion or fraud a Revenue Officer shall not record any land as a land-holder's private land, unless it is proved to be such by satisfactory evidence of the nature described in section 185." The following extract from the speech of the Honourable Mr. Forbes regarding "Private" land will be of interest : The term 'Private' land or Home-farm is unfortunate, as it seems to import merely land in the private occupation of the land-holder; and where the Bill imposes restrictions in respect of 'Private' land it appears to those who do not fully understand the import of the term, as if in some sort of way we were interfering with a person's natural right to take up and use land in his own Estate. The distinction obtains primarily in Zamindari and Jagir Estates and its orgin is historical. These private lands represent the "*Savaram*" lands or allotments, freed-from all public charges, which were specifically assigned by the Mussalman Government to the Zamindars in making settlements of Revenue with them. The "*Savaram*" lands were the remuneration or rather part of the remuneration which the Zamindar received for collecting the Government Revenue and maintaining public order in the Zamindari, and rendering such other services as the settlement imposed upon him. They were in a sense his free-hold so long as they remained in that category. All other lands were ryoti or, to use the

term in the Northern District, Jeroyiti, that is lands which a ryot could occupy on the customary terms and the revenue of which was taken into account in determining the annual Peshkush which the Zamindar bound himself to pay to the Government. The distinction exists wherever the Mohomedan Government held sway from the Himalayas to Cape Camorin. The great importance of maintaining the distinction lies in this, that, if land is private domain, occupancy rights cannot be acquired in it. (Except indeed the Zamindar voluntarily transfers it to the class of Ryoti land). It has therefore been the constant endeavour in many estates to claim ryoti land as private domain and so exclude it permanently from the class of land in which occupancy rights can be claimed. There is nothing in this to deprive the Zamindar of the power of extending his own cultivation. A Zamindar can cultivate any vacant ryoti land he pleases and so long as he pleases; only the land does not cease to be ryoti, and when he gives up the farm and admits a tenant that tenant becomes a ryot."

The records prepared, agreements or contracts executed subsequent to 1st day of July 1898 are irrelevant and inadmissible in evidence. 1st day of July 1898 is the date when the draft Tenancy Bill was first published. In the Madras Estates Land Bill No. 2 of 1905, the date mentioned is 1st day of May 1871. As it was in contemplation in 1871 to clearly elucidate the law in a fresh enactment, and prevent the landholders from encroaching upon the rights of ryots, the landholders were busy in preparing records and getting Muchilikas to frustrate the intention of the Legislature. It is not an unknown fact that holdings which have been in the uninterrupted possession of certain ryots more especially poor persons and persons disliked by the landholder or his officers are shown as having been leased out to others on "Ijara" muchilikas or shown as having been leased out to the highest bidder in an auction. In all these cases it could invariably be found that the original ryot alone is the occupant and cultivator. And it would be generally known that any length of enjoyment by a tenant of a holding which is "*Savaram*" cannot confer on him a right of occupancy.

T. Rajaram Row, Bezwada.

WEEK'S CASES.

13th November, 1911.

Benson, J. and Sundara Aiyar, J.

Cr. A. 248 of 1911.

Where a Taluq Stamp clerk receives money from stamp-vendors on five different occasions amounting to Rs. 400 and odd and after obtaining Stamp from the Head accountant, delivers them over to the Stamp-vendors, without paying the mony into the Treasury, and misappropriates the same, and for this purpose, he falsifies the accounts also on the five different occasions, he cannot be charged and tried at one trial of the offences under sections 409 and 471 of the Indian Penal Code. As the duty to receive money from stamp vendors, was not one that was assigned to him by his official superior, he can be only charged and convicted of an offence under sections 403 and 406 of the I. P. C., and a retrial was ordered.

Abdur Rahim J.

C. R. P. No. 770 of 1909.

Where a District Munsif refused to amend a mortgage decree so as to bring it into conformity with the judgment by correcting a misdescription of property it is open to the High Court to interfere with his order and direct him to amend the same.

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14th November, 1911.

Benson, J. and Sundara Iyer, J.

S. A No. 733 of 1910.

Where several uralans of a devasom enter into a Karar under which they agree that each of them should manage the devasom by turns, and that the trustee in management should have also power to sue and accordingly the managing uralan brought a suit for redemption and the Kanomdar objected that the other uralans must be necessary parties held (1) that the effect of the Karar is only to vest the right of management in one uralan, and not to divest the other uralans of their right as trustees who are therefore necessary parties.

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15 November, 1911.

Benson, J. and Sundara Iyer, J.

S. A. 1043 of 1910.

Where a bond stipulated for repayment by a sthani, on a certain date, and where a subsequent clause stated that the sthani would be liable to pay the balance if any left after the sale of sthanam properties, held that the sthani would be personally liable only after the sthanam properties have been exhausted.

16th November, 1911.

Abdur Rahim, J. and Spencer, J.

C. M. A. No. 154 of 1910.

Where a mortgage debt due to a judgment-debtor was attached in execution of a decree against him the attachment should be effected as if it is "a debt not secured by a negotiable instrument under section 268, C. P. Code" and not as immoveable property under section 274, C. P. Code.

Abdur Rahim, J.

C. R. P. No. 741 of 1910.

Where a member of a joint Hindu family relies upon a list containing the share of each member as determined at a partition, and applies for the execution of a decree that has fallen to his share under the list when the decree stood in the name of another, the list cannot be an assignment in writing within the meaning of section 232, C. P. Code, so as to enable him to apply for execution. A subsequent oral assignment will not cure the original defect ; such an application for execution is not a step in aid of execution, to save the bar of limitation.

Benson, J. and Sundara Aiyer, J.

S. A. Nos. 810 and 826 of 1910.

Where the Pujari of a temple sues for the declaration of his right to the trusteeship of a temple under a Takid by the founder, and also sues to recover the expenses incurred by him for newadhanam etc., in the temple, such a suit is not a suit of a small cause nature, so as to preclude a right of appeal to the District Judge. Where the District Court held that no appeal lay, the appeal was remanded to for rehearing.

17th November, 1911.

Benson, J. and Sundara Iyer, J.

S. A. No. 1714 of 1910.

Act III of 1895 has no application to a *gadaba* service inam, *i.e.*, an inam granted by the *Zemindar* for palanquin service rendered to him, and the sale of such an inam is not void, as it is not opposed to public policy.

S. A. No. 1553 of 1910.

Where members of a Mahomedan family governed by Marumakkatayam law enter into a Karar under which they agree that certain items of family property should be kept apart for carrying out certain trusts, and allot to the several branches of the family, various items of property to be enjoyed by each branch for life without any power of alienation, &c., this of itself will not prevent the properties held by a particular branch from being divisible, and a suit for partition by the member of the particular branch is therefore maintainable in the absence of any family custom establishing endorsibility.